

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

76-7618

In The
United States Court of Appeals
For The Second Circuit

THE GOVERNMENT OF INDIA AND THE FOOD
CORPORATION OF INDIA,

Plaintiffs-Appellants,

-against-

COOK INDUSTRIES, INC. AND COOK AND COMPANY,

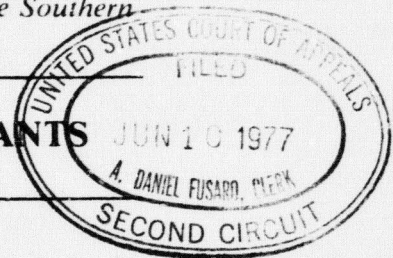
Defendants-Appellees.

*On Appeal from United States District Court for the Southern
District of New York*

BRIEF FOR PLAINTIFFS-APPELLANTS

DELSON & GORDON
Attorneys for Plaintiffs-Appellants
230 Park Avenue
New York, New York 10017
(212) 661-9800

NORMAN MOLOSHOK
ALVIN H. MEADOW
Of Counsel



P/S

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STATEMENT OF ISSUES

Did the District Court abuse its discretion by disqualifying the law firm of Delson & Gordon and Frederick W. Meeker, an associate of that firm, from continuing to represent the plaintiffs in this action?

COURSE OF PROCEEDINGS

The plaintiffs, The Government of India and The Food Corporation of India, commenced an action by the filing of a summons and complaint on May 3, 1976 against defendants, Cook Industries, Inc. and Cook and Company (4a)*. No answer was interposed by the defendants and the time to answer had been extended by stipulation among the parties. Approximately 2-1/2 months subsequent to the commencement of the action, by motion returnable August 24, 1976, the defendants moved to disqualify Delson & Gordon. The ground for disqualification was the previous representation of defendant Cook Industries, Inc. (hereinafter "Cook") by Frederick W. Meeker at a time when Mr. Meeker was employed by another law firm (19a). Mr. Meeker is presently associated with Delson & Gordon.

The motion was returnable before Hon. Robert J. Ward, United States District Judge for the Southern

*Page numbers are references to the appendix.

District of New York. The Court decided the motion on the papers submitted and the entire record in the prior case. (200a).

The Court rendered a written opinion dated November 19, 1976, and directed that the firm of Delson & Gordon and Frederick W. Meeker be disqualified (205a). Plaintiffs were directed to designate substitute counsel within thirty days of the date of the decision (205a). This latter provision of the opinion and order of the District Court was modified by stipulation and order dated December 13, 1976, which provided that any required substitution of Delson & Gordon as plaintiffs' counsel would be effected sixty days after the final determination of any appeal from the order of disqualification of the District Court (212a, 213a). The plaintiffs timely filed their Notice of Appeal dated December 13, 1976, from each and every provision of the order of Judge Ward disqualifying Mr. Meeker and Delson & Gordon (214a).

STATEMENT OF CASE

A. PRELIMINARY STATEMENT

The sole ground for the Order of disqualification by the District Court was that Mr. Meeker, while associated with the law firm of Hill, Rivkins, Carey, Loesberg & O'Brien (hereinafter "Hill, Rivkins") represented defendant Cook with respect to the defense of one claim that Cook delivered allegedly shortweighted and water damaged cargo (hereinafter the "Soy Bean Cases"). The District Court held that this claim was "substantially related" to the present action and gave rise to an irrebuttable presumption that Mr. Meeker had access to Cook's confidential information. This presumption disqualified Mr. Meeker and, peradventure, the entire firm of Delson & Gordon (197a-200a).

The purchasers in the prior case brought separate actions against Cook as supplier, and the carrier for the same claim. The two actions were consolidated and shall hereinafter be referred to as the "Soy Bean Cases" (221a-245a).

When Mr. Meeker participated in the Soy Bean Cases, he was a neophyte lawyer. It is the contention of

Cook herein, that Cook entrusted Mr. Meeker with the defense of serious claims of fraud. This contention is subject to a high degree of proof which is totally lacking in the record.

The claim against Cook in the Soy Bean Cases was dismissed on the basis of the certificates of weight of the licensees of the U.S.D.A. which were part of a stipulated record (378a, 448a).

These certificates were binding on all parties in the Soy Bean Cases regardless of their accuracy because the purchasers made no claim of fraud or collusion in their issuance. (448a, 38a, 226a, 446a)

The plaintiff in the present action purchased wheat in bulk from Cook pursuant to a contract which required that the quantity and quality delivered on board ship at the loadport in the U.S.A. be determined by the licensees of the U.S.D.A. (A 19)*. Unlike the Soy Bean Cases, plaintiffs challenge the finality of the certificates of weight and quality by the licensees of the U.S.D.A. by alleging fraud in their issuance (10a). Plaintiffs by claiming fraud have brought into question the accuracy of the weight and quality certificates by the only legal means possible.

*References to pages with a capitalized A are to the addendum to the brief.

The Soy Bean Cases cannot be "substantially related" to the present action since the former cases involve certificates issued by semi-government officials the accuracy of which were accepted on their face in the absence of allegations of fraud or collusion in their issuance; and the present case concerns a conspiracy to issue false certificates of weight.

The learned District Court Judge, in disqualifying Mr. Meeker and the firm of Delson & Gordon, failed to use the proper legal standards to determine whether or not the Soy Bean Cases were substantially related to the present action; failed to give effect to the evidence in the record that Mr. Meeker did not have access to Cook's confidential information; failed to require the moving party to sustain its burden of proof; engaged in speculations not supported by the evidence in the record; and, contrary to the basic principles of American jurisprudence, assumed the plaintiffs' attorneys were guilty until proven innocent (195a-210a).

The Court should take judicial notice that information with respect to the malfeasance and fraud of the defendants was available from numerous public sources. Mr. Meeker's services as an associate of Delson & Gordon were not and are not needed to provide that information. Delson & Gordon, attorneys for plaintiffs, have certified

that they have not received any confidential information from Mr. Meeker concerning Cook (144a). The U.S. Government has brought a civil action commenced in December of 1976, and pending in the U.S. District Court, Washington, D.C., Docket #76-2337, seeking judgment in the sum of \$24 million, against Cook alleging fraud and collusion by Cook in the issuance of weight and grade certificates by licensees of the U.S.D.A. The District Court in its decision has referred to the fact that Cook has been convicted in a criminal action on the same charge, p. iv of appendix, fn. 12 of the decision below (209a); and it is public information that a former Vice President of Cook was convicted on his own admission and sentenced to a prison term for these crimes. This case is one of five brought by plaintiffs pending against the major grain suppliers as a result of public disclosure of mammoth fraud in the export of grain to underdeveloped nations.

The order of the District Court disqualifying Mr. Meeker and Delson & Gordon should be set aside on the ground of abuse of discretion.

B. STATEMENT OF FACTS

1. The Soy Bean Cases

Mr. Meeker graduated from Fordham Law School in June, 1972 having attended law school at night and graduating

after four years (61a). Shortly prior to graduation he was employed by the Hill Rivkins firm as an associate (61a). He worked for that firm in that capacity until April, 1976 when he was hired by the firm of Delson & Gordon as an associate (62a). During the course of his employment with the Hill Rivkins firm, Mr. Meeker handled a large number of admiralty matters involving claims for shortweight and damaged cargo and, in this connection, on one occasion defended a short-weight and damaged cargo case on behalf of Cook. That claim (the Soy Bean Cases) was brought by the purchasers against Cook and the carrier for recovery of a shortweight claim in the sum of \$32,452.46 for 254 tons of a cargo of 14,700 metric tons or 1.729456% of the cargo set forth on the bill of lading (398a, 399a). Claim also was made for 24,808 kilograms of mildewed soy beans which according to the survey report was a result of leak of seawater through the hatch cover of the ship's hold (398a, 399a). The facts of the Soy Bean Cases are simple. The seeming complexity and multiplicity of documents are solely the consequence of a motion dealing with arbitration and a technical objection to the authenticity of documents (233a). The contract dated November 19, 1971 was between Cook and the China Trade Development of Taipei (381a). The contract called for delivery at the loadport in the U.S.A. of 14,000 metric tons with a weight tolerance of 5% at a price of \$127. per metric

ton, payment against loadport documents (381a). The contract provided that the certificates issued by licensees of the United States Department of Agriculture (U.S.D.A.) were to govern with simultaneous appeal to Inspectors of U.S.D.A. with respect to grade alone. The express language of the purchase contract was "weights to govern, loading official", "grades to govern, loading official - Federal App." (381a).

The cargo was loaded by Cook aboard the vessel and there was no indication that Cook, as the shipper, weigher and loader of the vessel, requested the carrier to certify the weight or grade of the cargo. The bill of lading clearly sets forth on its face the following:

"Shipped in apparent good order and condition by Cook Industries, Inc. on board the good steamship or motor vessel called the NORMA ... quantity described and stowage 44,034,129 60 bushels, No. 2 yellow soybeans in bulk and stowed in holds 1, 3, 5."

* * *

"3. shippers weight and quality are unknown."
(391a)

In accordance with the provisions of 49 U.S.C. §101 (Sec. 21 Pomerene Act), which governs the liability of the carrier on bills of lading, the carrier is not responsible for the information contained on the bill of lading

where he disclaims knowledge of the contents. 46 U.S.C. 1303(4) provides that nothing contained in the Carriage of Goods by Sea Act (COGSA) shall limit the application of the said Pomerene Act as follows:

"Provided that nothing in this chapter shall be construed as repealing or limiting the application of any part of Sections 81 to 124 of Title 49."

See also Joseph v. Panhandle & Santa Fe Railway, 235 N.Y. 306 (1923).

Furthermore, all parties in the Soy Bean Cases were bound by the official weight and quality certificates issued by licensees of the U.S.D.A. Bartlett & Co. v. Merchants, 323 F.2d 501 (5th Cir. 1963), 349 F.2d 294 (5th Cir. 1965); Toepfer v. Continental Grain Co., 1 Lloyd's Law Reports p. 289, Queen's Bench Division (Commercial Court) [1973]; aff'd 1 Lloyd's Law Reports p. 11 (Court of Appeal) [1974]); Hughes v. Sapphire Realty Co., 11 N.Y.2d 17 (1962); Dustan v. McAndrew, 44 N.Y. 72 (1870).

Thus, the sole issue in the Soy Bean Cases was whether or not the licensees of the United States Department of Agriculture certified that the amount set forth on the bill of lading and invoice was loaded aboard the vessel "NORMA" (391a, 392a-395a). The only legal challenge that could be made with respect to the accuracy of the certificates

would be an allegation of fraud or collusion in their issuance. No such allegations were made in the Soy Bean Cases by the purchasers (236a).

In the present case, the contracts provided that the weight and grade were to be determined when grain is delivered at the loading port by licensees of the U.S.D.A. as follows:

"(11) DETERMINATION OF WEIGHTS AND GRADES:
The weights of grain delivered hereunder shall be determined and certified at Seller's expense by a weigh-master at the port at which delivery is made. The grade and condition of the grain shall be determined and certified at Seller's expense at such port at the time of delivery by an inspector licensed under the United States Grain Standards Act and in accordance with and by reference to the Official Grain Standards of the United States." (A 19)

Furthermore, most of the shipments to India which are the subject of the complaint herein were financed by the United States Department of Agriculture pursuant to the P.L. 480 Program. The P.L. 480 regulations provide that the weight and grade of the grain shall be determined by licensees of the Department of Agriculture at the loadport. See P.L. 480 regulations, Appendix A "Contracting Requirements" which provide as follows:

"(6) WEIGHT AND GRADE (BULK): In the case of bulk wheat, the weight shall be determined at point of loading to vessel and the grade shall be determined by an inspector holding a license under the United States Grain Standards Act or the Agricultural Marketing Act at point of loading to vessel."

In accordance with Paragraph 16 of the Indian standard form of contract, payment is made upon presentation of the weight certificate issued at the loading port. See Paragraph 16(ii) which provides as follows:

"(16) The following documents are required to be furnished by the Seller along with invoices as per clause (8) [payment]:

* * *

(ii) Weight Certificate in original with ten copies thereof on which it is indicated that weight of the commodity was determined by a licensed weigh-master at point of loading vessel in the United States." (A 20)

The plaintiffs upon discovery of a discrepancy between the weight certificates issued by licensees of the U.S.D.A. at the loadport and weight found at discharge of the cargo in India, may not sue for breach of contract unless it can be established that the incorrect amount was certified to by licensees of the U.S.D.A. as a result of fraud. Plaintiff have alleged a separate action for fraud in their Complaint (9a).

The Soy Bean Cases were tried to the Court on stipulated facts (376a). Paragraphs 10 and 11 of the stipulated facts established the authenticity of the eight weight certificates issued and accepted into evidence the affidavit of Daniel X. Willis, Chief Weigh Master of the Destrehan Board of Trade, a licensee of the U.S. Department of Agriculture and one of the signatories to the weight certificates (378a). The affidavit of Mr. Willis stated that it was his understanding as supervisor that the weighing was done in accordance with the proper standards and that in his opinion the certificates so issued were correct, thus certifying that these were proper business records (396a). The Court in the Soy Bean Cases, based upon the documents alone, held:

"Here, defendant Cook who arranged for shipment of the goods as shown by the bill of lading issued by Austin and by the weight certificates that it [Cook] delivered the full contract amount of soy beans to the carrier. Kupferman v. U.S., 227 F.2d 348, 350 (2d Cir. 1955)5/ Plaintiffs have offered nothing to refute the validity of these documents. Thus, plaintiffs' charge that Cook breached its contract to deliver the full amount must fail and plaintiffs' complaint against Cook is dismissed.

As it has been established that the shipper made proper delivery, the burden

of proof shifts to the carrier to establish that it is not liable for the loss..." (448a, 449a)

Thus, based upon the certificates of weight and quality, and in the absence of a claim of fraud, there was no need for Mr. Meeker to examine into the loading procedures of Cook. The purchasers and the carrier contended in March, 1974 that the authentication of the certificates of weight could not be made by Mr. Meeker's affidavit because it was not based upon personal knowledge (335a, 336a). By the stipulation of facts dated July 15, 1975, all parties withdrew their objections to the authenticity of the certificates of weight (378a).

In accordance with Paragraph 19 of the stipulation of facts (379a) the only dispute submitted to the Court was with respect to the claim for shortage of weight. The water damage claim was settled out of court by the carrier.

Further, in the Soy Bean Cases, the survey report indicated that the weight at the discharge port was determined by unloading by grab buckets and weighing in individual bags (398a), which method caused Mr. Jack Berg, an expert in the shipment of grain, to indicate that such discharge method could be responsible for the weight discrepancy (412a).

The Soy Bean Cases are not substantially related to the present case before the court because in the Soy Bean Cases the plaintiffs did not allege that the certificates of weight were fraudulently issued. Their fraudulent issuance is the principal issue in the present case.

2. The Defendants' Motion to Disqualify

The defendants moved to disqualify plaintiffs' attorneys based upon an alleged conflict of interest of Mr. Meeker who was then a newly hired associate of Delson & Gordon. The defendants' moving papers contain allegations made by Cook's present attorney, Victor Friedman, Esq., which were not based upon personal knowledge and are thus inadmissible (351a-352a). The sole contention set forth by Cook is that the Soy Bean Cases are substantially related, thus giving rise to an un rebuttable presumption of access of Mr. Meeker to confidential information of Cook (22a).

The defendant attempted to submit certain papers to be received in camera by the Court. The Court refused to inspect these papers and rejected them in toto. They are not part of this record and, furthermore, the Court denied the defendants' motion pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure to add such papers to the record. (207a, 3a)

Only three out of the 153 shipments complained about in the present action concern cargoes of grain loaded by Cook's sole elevator located in Reserve, Louisiana. The other shipments complained about were made by elevators controlled by other companies which loaded the grain pursuant to instructions from Cook. (A 22-A 31)

Mr. Meeker in his affidavit stated that he did not become familiar with the loading practices of Cook; that his sole contact with Cook was with outside counsel for Cook; that he never discussed or had access to any confidential information which related in any way to the loading practices of Cook or of any fraud in the issuance of the weight certificates (59a-76a).

There was no evidence before the District Court that Mr. Meeker had access to or received any information with respect to the internal workings of the Cook elevator at Destrehan, Louisiana, which would give rise to a breach of an attorney-client relationship or give Mr. Meeker an unfair advantage in this case (59a-76a).

3. The Decision of the Court below

The District Court based its decision to disqualify Mr. Meeker and Delson & Gordon solely upon the court's determination that the present action herein premised on the

fraudulent issuance of weight and grade certificates by licensees of the U.S.D.A. was substantially related to the Soy Bean Cases, giving rise to an irrebuttable presumption that Mr. Meeker had access to confidential information (199a). The District Court held that the Soy Bean Cases were substantially related to the present case because Mr. Meeker might have acquired related information (199a). The District Judge, assumes in the absence of actual evidence that Mr. Meeker might have acquired access to confidential information (199a). Such an approach begs the question and eliminated the requirement that the moving party has a high burden of proof to establish that Mr. Meeker, an inexperienced associate, had access to confidential information.

The court states at page 5 of its opinion as follows:

"...a thorough examination of the entire record in the Soy Bean actions leads this court to reject Mr. Meeker's assertion that all parties accepted the bills of lading and weight certificates as dispositive of the quantity of soy beans actually loaded onto the ship obviating discovery." (200a)

In reaching this conclusion, the court totally disregarded the stipulation of facts which conceded the authenticity of the certificates of weight issued by the licensees of the U.S.D.A. (378a), and the absence of allega-

tions that such certificates were fraudulently issued. The court by implication concedes that if "...the alleged shortage in the Soy Bean Action was never actively litigated; consequently, Mr. Meeker did not have occasion to investigate Cook's loading procedures or conduct anything more than minimal discovery..." (200a), Mr. Meeker and Nelson & Gordon could not be disqualified. There are no facts to indicate the contrary, and the court would foist upon Mr. Meeker the impossible burden of proving a negative.

a. The Complaint and The Amended
Third Party Complaint

The court asserts that in Par. 18 of the soybean complaint and third party complaint, it is alleged that Cook may have been responsible for loss or damage (200a). Plaintiff and third party defendant cannot raise an issue as to quantity or quality loaded in the Soy Bean Cases in this manner because the official loading certificates in that case were conclusive proof as to what was loaded in the absence of fraud.

b. The Validity and Accuracy of
Documents Contested

The District Court holds that the validity and accuracy of the documents in the Soy Bean Cases were actively contested by plaintiffs and third party plaintiff in oppos-

ing Cook's motion for summary judgment (p. 5 of the decision below (200a), fn. (10), referring to Rule 9G Statement) (209a). This characterization by the learned judge below is not supported by the record. Cook's motion to dismiss the complaint supported by Meeker's affidavit was based upon the contention that the weight and grade certificates issued by licensees of the U.S.D.A. were final and conclusive.

See Paragraphs 10 and 11 of the Meeker affidavit in support of motion to dismiss:

"11. The contract of sale herein specified that 'Weights to Govern Loading Official', meaning that the weights delivered to the carrying vessel were to govern the amount payable to Cook and any net loss subsequent to loading was to be for the account of the receivers.

12. The contract of sale also specified that the 'Grades to Govern Loading Official', meaning that any subsequent derogations in grade after loading were to be the responsibility of the receiver." (275a)

Meeker annexed to his affidavit the contract and weight and grade certificates as well as other documents (277a-306a).

The reference in Paragraph 14 of Meeker's affidavit to "fraudulent bills of lading" (276a) referred to in footnote 10 of the decision below (208a) is a gratuitous statement by an inexperienced attorney which made no sense and must be disregarded because the bill of lading issued by

the carrier reflected that which was contained on the official weight and quality certificates, the conclusive accuracy of which latter documents Cook was relying upon in Paragraphs 11 and 12 of the same affidavit (275a). The plaintiff never alleged the existence of fraud.

The plaintiffs in the Soy Bean Cases opposed the motion upon the ground that Meeker's affidavit which purported to place into evidence the weight and grade certificates was not based upon personal knowledge pursuant to Rule 56(e) of FRCP: i.e., Meeker lacking personal knowledge could not authenticate the weight and grade certificates which were to conclusively determine what was loaded aboard the vessel. See p. 3 of plaintiffs' memo of law reading as follows:

"The moving affidavit is that of Attorney Meeker who seeks to establish the quantity of cargo delivered by attaching Weight Certificates to his affidavit. It is clear that the attorney has no personal knowledge of the loading of the cargo and accordingly his affidavit does not comply with Rule 56 (e) F.R.C.P." (emphasis supplied). (329a)

The third party defendant (Peter J. Zambito, affiant) opposed the Cook motion to dismiss on the following asserted grounds:

(a) The affidavit of Daniel X. Willis (2/4/76), chief weigh master of Cook, apparently submitted in support of Cook's motion failed to comply with Rule 56(e) because in Paragraph 5 thereof it was stated to be based upon "personal belief" (335a). Again, authentication of the weight certificates was further objected to because the certificates "...are neither sworn nor certified copies, as required by Rule 56e F.R.C.P. Furthermore, the exhibits attached to the affidavit of Cook's counsel, specifically Exhibits C and E-1 through E-13, are not complete or true copies of the originals" (336a). The third party defendant suggested the authentication should be done by Mr. Duffy, another employee of the Destrehan Board of Trade (335a). The Destrehan Board of Trade is a non-profit licensee of the United States Department of Agriculture. Both Willis and another weigh master, W. J. Duffy, were not employees of Cook. This opposition to authentication of the certificates was not made in good faith because the Willis' affidavit and authentication of all eight copies of the weight certificates were accepted by all parties in Paragraphs 10 and 11 of the stipulation of facts dated 7/15/75 (378a). Defendant's stipulation of fact withdrew all objections to the other exhibits

referred to as well (376a). There never was any real doubt as to the authenticity of the weight certificates and the objection to such certificates was purely technical and dilatory.

(b) Meeker failed to set forth on behalf of Cook a statement pursuant to Rule 9(g) of the facts as to which there was no genuine issue (336a).

Cook's motion to dismiss was denied by decision of Judge Stewart dated October 11, 1974 on the ground that the contents of the weight certificates were not properly or sufficiently authenticated by affidavits based upon personal knowledge or by certified copies of the certificates; and further Meeker failed to provide a statement pursuant to Rule 9(g) of the General Rules of the U.S. District Court. Judge Stewart held:

"Since we agree that defendant and third-party plaintiff Cook has failed to comply with the requirements of Rule 56(e), we deny its motion for summary judgment. Consequently, we need not consider whether there are 'any genuine issue(s) as to any material fact [or] that the moving party is entitled to judgment as a matter of law,' as is required by Rule 56(c)." (emphasis supplied) (351a).

f.n.1:

"Moreover, we note that movant Cook has failed to comply with Rule 9(g) of the

General Rules of the United States District Courts for the Southern and Eastern Districts of New York, requiring that the moving party annex to the notice of motion for summary judgment a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried." (351a)

The Soy Bean Cases were dismissed as to Cook on the certificates of weight and there were no fact issues relevant to Cook beyond these documents.

- c. The Accuracy of the Weight and Quality Certificates Was Not Put in Issue by the Response to Cook's Notice to Admit.

The learned judge below states that in response to Cook's notice to admit in the Soy Bean Cases, although the authenticity of the certificates of weight, loading, invoices and bills of lading may have been admitted, the plaintiffs and third party plaintiff did not admit the accuracy of these documents:

"Request #2 asked the third-party plaintiff to admit only '[t]hat the copies of the weight certificates ... are true copies of such certificates.' The response to that request was that 'defendant' and third party plaintiff did not weigh the cargo in question and, while having received copies of the certificates ... can neither admit nor deny the accuracy of the contents of said certificates at this time." (emphasis supplied) p. 6 Decision. (201a)

The conclusion reached by the Court below was as follows:

"Thus, it is clear that the accuracy and validity of the documentary evidence was not admitted." (Decision, p. 6) (201a)

In this respect it is submitted that the District Court is in error. Once the certificates of weight were authenticated, the inquiry ends.

- d. The District Court Engaged in Unwarranted Speculation that Meeker Conducted an Investigation and Had Access to Confidential Information Because the Accuracy of the Weight and Quality Certificates Were Contested

The District Court at p. 7 of its decision concludes, despite the conclusiveness of the contents of the certificates of weight, and the stipulated record which contained no evidence that the grain was improperly weighed (376a, 448a), that

"... Mr. Meeker might have conducted at least a limited investigation of Cook's weighing and loading procedures and he might have had access to confidential information." (202a)

This speculation by the court is without factual substantiation in the record.

The Court speculates that the investigation was done by Mr. Meeker prior to the entry into the stipulation

of fact (202a). Mr. Meeker denies having conducted such investigation (71a).

5. The District Court, Without Factual Support, Derives a Sinister Meaning From the Fact that the Affidavit of the Junior Weigh Master Was Not Used

The District Court further proceeds to conclude that the reason why an affidavit was not obtained from the junior weigh master Duffy authenticating the weight certificates was:

"... Mr. Meeker conducted some investigation or 'inquiry' before deciding to obtain Mr. Willis' and not Mr. Duffy's affidavit." p. 7, Ward Decision (203a).

The Willis Affidavit is sworn to July 31, 1974 (305a-306a). The affidavit was objected to by the purchasers and carrier on grounds of probity on Cook's motion to dismiss dated January 7, 1975. Such objections were withdrawn and the affidavit accepted by them in the stipulation of fact dated July 15, 1975 (378a).

The basis for the conclusion concerning the failure to provide an affidavit from Duffy apparently is the court's unwarranted speculation contained in footnote "12" of the Ward Decision as follows:

"The Court notes in passing that the indictment to which Cook pleaded nolo contendere contains a schedule of alleged shortweighings. On that schedule, Mr. Duffy, the licensed weigher who signed the weight certificates in the soybean cases, is listed as the licensed weigher of one of the alleged shortweighings enumerated in the indictment. Although the indictment was filed after the Soybean Actions were concluded, it is reasonable to assume that Mr. Meeker may have come by some information about Mr. Duffy that led him to decide to bypass this most appropriate witness. In this regard, the Court also notes that Mr. Meeker was aware of the 'grain scandal' at least as early as July 1975 when he sent a message to obtain seven back issues of The New York Times containing front page stories on the grain scandal." Appendix iv, Ward Decision.

The court overlooks the fact that

(While Mr. Duffy may have signed one of the 37 certificates called into question (87a-89a) by the Cook indictment, Mr. Willis, as chief weigh master and supervisor of Mr. Duffy, necessarily signed all of the original weight certificates referred to in the indictment including the one signed by Duffy referred to in the indictment.

(b) The indictment of Cook referred to is dated May 6, 1976, almost a year after the stipulation of fact and two years after the execution of the Willis affidavit. Mr. Duffy was not indicted; and no known

newspaper reports implicate Mr. Duffy in the grain scandal.

(c) The Court suggests that Mr. Meeker conducted an investigation because he was aware of the grain scandal as early as July, 1975 when he asked that certain back issues of The New York Times be obtained containing front page articles on the grain scandal (209a). Such articles did not relate to Cook or the Soy Bean Cases in any way and there is no evidence in the record to indicate that they did. In July of 1975, one year prior to the indictment of Cook, the stipulation of facts was signed, and there certainly was no need for investigation by Mr. Meeker.

There is simply no basis for this kind of speculation by the court.

f. Mr. Meeker Is Erroneously Deemed by the Court to Have Had Access to Confidential Information Because He Talked on a Few Occasions to Cook's Lawyers

Mr. Meeker spoke to Mr. Reams and Mr. Ireland, two lawyers of the firm of Ireland & Reams, representing Cook Industries, Inc. who practice in Memphis, Tennessee on a few occasions (74a). Mr. Meeker never discussed matters beyond the documents in the case (76a, 183a). The court is of the

opinion that merely having talked to Cook's lawyers dis-
qualified Meeker as it provided "... access to confidential
information." Such conclusion by the court is unwarranted
by the facts in the record. The affidavit of Mr. Friedman
is not based upon personal knowledge and could not be relied
upon by the court (352a).

ARGUMENT

POINT I

THE DECISION OF THE DISTRICT COURT
DISQUALIFYING FREDERICK W. MEEKER AND
DELSON & GORDON CONSTITUTES AN ABUSE OF
DISCRETION BECAUSE IT IS BASED UPON AN
ERRONEOUS APPLICATION OF LAW AND FINDINGS
OF FACT WHICH ARE NOT SUBSTANTIATED BY
THE RECORD

The court disqualified the firm of Delson & Gordon solely because it held that the present action brought by The Government of India and The Food Corporation of India against Cook Industries, Inc. and Cook and Company was substantially related to the Soy Bean Cases (199a). In order to make a determination as to whether or not the two cases are "substantially related", the court applied the following standard:

"... if it can reasonably be said that in the course of the former representation the attorney might have acquired information relating to the subject of his subsequent representation." p. 4, Ward Decision. (199a)

The District Court contends that the authority for this position is contained in T. C. Theatre Corp. v. Warner-Bros. Picture Corp., 113 F. Supp. 265, 268-269 (S.D.N.Y. 1953).

The above quoted simplistic test relied upon by the District Court below has been rejected by Judge Kaufman in United States v. Standard Oil Company, 136 F.Supp. 345, 354 (SDNY 1955) and by Circuit Judge Moore in Silver Chrysler Plymouth Inc. v. Chrysler Motors Corp., 518 F.2d 751, 754 (2d Cir. 1975), where Judge Moore held that the previous cases, including T.C. Theatre Corp., supra, furnished no applicable guide as to what creates a "substantial relationship" between cases in this context. Thus, the District Court in disqualifying Mr. Meeker and Delson & Gordon engaged in an erroneous application of the law. Judge Moore held as follows in Silver Chrysler Plymouth, Inc., supra, at p. 754:

"The Circuit has also adhered to the rule enunciated by Judge Weinfeld in T.C. Theatre Corp. v. Warner Bros. Pictures, Inc., 113 F.Supp. 265, 268 (S.D.N.Y. 1953), that 'where any substantial relationship can be shown between the subject matter of a former representation and that of a subsequent adverse representation, the latter will be prohibited.' And as to proof, Judge Weinfeld continued: 'the former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are substantially related to the matters or cause of action wherein the attorney previously represented him, the former client' (p. 268). This case was the genesis of the now so-called "substantially related" test. But as the present Chief Judge of the Second Circuit Court of Appeals noted twenty years ago in United

States v. Standard Oil Company, 136 F.Supp. 345, 355 (S.D.N.Y. 1955): "[u]nfortunately, the cases furnish no applicable guide as to what creates a "substantial" relationship." The cases available at that time were cases in which the relationship was 'patently clear.' 4/" Id.

Circuit Judge Adams, in a concurring opinion in Silver Chrysler Plymouth, Inc., 518 F.2d 751, 759 set forth the standard to determine substantial relationship based upon "...issues essentially the same" as follows:

"Surely, were the proof to disclose that while at Kelley Drye, Mr. Schreiber had worked in any significant respect on a case implicating issues 'essentially the same' as those in dispute here, his disqualification would appear to be mandated. This is so because, given the identity of issues between the earlier and the present cases, Mr. Schreiber would be unable to overcome the inference that he was privy to client disclosures germane to the case here, and the appearance of impropriety would be sufficiently strong so as to prohibit his continued subsequent representation." (emphasis supplied).

The issues in the Soy Bean Cases concerned only the authenticity of the certificates of weight whereas in the present action the issues involve fraudulent issuance of weight and grade certificates. The two cases are not "substantially related" because the issues involved in the respective cases are not essentially the same.

The "...might have acquired information" test relied upon by the District Court allowing the court to engage in unwarranted speculation is not a proper test to disqualify counsel of choice.

The T.C. Theatre decision, supra, and Consolidated Theatres, Inc. v. Warner Bros. Circuit Management Corporation, 216 F.2d 920 (2d Cir. 1954), relied upon by the District Court for the "...might have acquired information" test, were subsequently distinguished in United States v. Standard Oil Company, 136 F.Supp. 345, 354 (S.D.N.Y. 1955), as cases in which the facts in the record clearly established access to confidential information by the former attorney. Judge Weinfeld in the T.C. Theatre case, supra, did not go beyond the facts in the record. See Judge Kaufman's holding in U.S. v. Standard Oil Company, supra:

A. Substantial Relationship of Subject Matter

Unfortunately, the cases furnish no applicable guide as to what creates a "substantial" relationship. In both of the cited cases [T. C. Theatre, supra, and Consolidated Theatres, Inc., supra], the attorney in question had served as defense counsel for motion picture producers in anti-trust actions brought by the United States government charging defendants with a nationwide conspiracy in violation of

Sections 1 and 2 of the Sherman Act, 15 U.S.C.A. §§ 1, 2. They were later retained by independent exhibitors as counsel for plaintiffs in treble damage actions against these producers alleging the same type of conspiracy in violation of the Sherman Act. The evidence disclosed that the attorneys in question had had access to the files of their former clients which showed in detail their clients' modus operandi, and that they had made extensive use of these files in preparing a defense against the government. The relationship between the first anti-trust litigation and the second case was in each instance patently clear; indeed, the finding of a nation-wide conspiracy in the government's case was prima facie proof of a conspiracy in the later private actions.12/ No such glaringly obvious relationship exists in this case."

The Court may not disregard the evidence in the record and engage in a series of unfounded speculations in order to disqualify Mr. Meeker. To do so constitutes an abuse of discretion. See Gas-a-tron of Arizona, et al. v. Union Oil Co. of California, 534 F.2d 1322, 1325 (9th Cir. 1976) where, in setting aside the order of disqualification of a young associate, the court held as follows:

"We recognize that the primary responsibility for controlling the conduct of lawyers practicing before the district court lies with that court, and not with us. We will not disturb the district court's exercise of its discretion in fulfilling that responsibility if the record reveals any sound basis for its discretion disqualifying or

refusing to disqualify a lawyer. The record in this case does not support the district court's decision. ...[T]he associate had not actually obtained any confidential information about either Shell or Exxon that would be relevant to the pending litigation, 2/ and he had not worked on matters that were 'substantially related to the pending litigation.

2/ Unlike Chugach Electric Ass'n v. United States District Court, 370 F.2d 441 (9th Cir. 1966), the record provides no basis for an inference that Mr. Burbidge gained any actual knowledge of the private affairs of Shell or Exxon that could have been used by him in these antitrust cases."

"We share the district court's concern for the appearance of impropriety. However, we are convinced that any initial inference of impropriety that arose from Mr. Burbidge's potential physical access to the files of Exxon and Shell and from his association with lawyers who did know confidential information about them was dispelled by evidence that he saw none of the files other than those relating to the cases assigned to him heretofore described and that he heard no confidences about Exxon and Shell from the lawyers with whom he was earlier associated.

Reversed." 534 F.2d at 1325.

Judge Kaufman in the Standard Oil Co. case, p. 356, held that the word "substantial" must be given some restrictive content especially as in the present case where the integrity of the attorneys has not been challenged:

"There appears to be no case where the question of whether a substantial relationship existed between the former representation and the second suit presented serious factual problems. But, clearly, the word 'substantial' must be given some restrictive content. 18/ (emphasis added)

18/ The necessity for requiring a substantial relationship before assuming that confidences were reposed is particularly acute where the personal integrity of the attorney in question has not been challenged - i.e., where complainant bases its case on an inadvertent betrayal so far as the issue of confidences is concerned, as is the case here." 136 F.Supp. at 356.

Furthermore, Judge Kaufman, in Standard Oil Co., p. 361, f.n. 29, indicated that "...the words 'investigated' or 'passed upon' seem indicative of a requirement that an attorney has done more than see confidential files." The attorney should do "...far more than just accidentally see or briefly peruse and initial a related document...common sense dictates that an attorney should not be disqualified where actual knowledge of the controversy based on his former employment is non-existent...an ad hoc, practical approach to the specific factual problems in each case is indicated."

In furtherance of the "ad hoc" approach, Judge Kaufman in U.S. v. Standard Oil closely followed facts in the record and did not speculate as to imaginary betrayal of confidences as follows:

"These conclusions have been reached after a thorough document-by-document analysis of the papers upon which the government bases its motion.⁴⁴ Many of these documents fail on their face to show any conceivable disqualifying relationship between their content and the subject matter of the present controversy. Others bear a surface relationship, but can be and are satisfactorily explained as unrelated..." 136 F.Supp. at 366.

Judge Kaufman in Standard Oil Co., supra, would not permit an inference of evil to be made from Mr. Meeker's participation as an associate in the present action:

"43. With regard to the government's contention that there is an appearance of evil arising from the fact that out of 85 men in the firm of Sullivan & Cromwell, Mr. Horn is a key figure in the present suit, it must be pointed out that Mr. Horn's specialty is the field of foreign economic and legal problems. If he is not qualified to act, his firm would be disqualified regardless of his participation, under the partnership-imputed knowledge theory. If he is qualified, there is no appearance of evil arising from his participating in the case rather than some other partner. To contend for this would be to place the single practitioner in a more favored position." 136 F.Supp. at 366.

Judge Kaufman criticized the didactic approach of the District Court below as follows:

"When dealing with ethical principles, it is apparent that we cannot paint with broad strokes. The lines are fine and must be so marked. Guide-posts can be established when virgin ground is being explored, and the conclusion in a particular case can be reached

only after painstaking analysis of the facts and precise application of precedent.^{45/} After full consideration of all applicable principles, ...

^{45/} [S]ome of the greatest errors in thinking have arisen from the mechanical, unreflective, application of old formulations -- forgetful of a tacit "as if" -- to new situations which are sufficiently discrepant from the old so that the emphasis on the likenesses is misleading and the neglect of the differences leads to unfortunate or foolish consequences. United Shipyards v. Hoey, 2 Cir., 1942, 131 F.2d 525, 526-527." 136 F.Supp. at 367.

The District Court did not take into account that the standard of proof to establish access to Cook's confidential information by Mr. Meeker, a junior associate, is very high.

"Decision turns on whether, in the course of the former 'representation', the associate acquired information reasonably related to the particular subject matter of the subsequent representation. In making this determination the court will assume that a senior partner knows more about what is happening in the firm generally than does a junior associate.... The persuasiveness and detail of the proof required will thus vary inversely with the status of the lawyer in the firm in the prior litigation." (emphasis added)

Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 370 F.Supp. 581, 586, 587 (E.D.N.Y. 1973). See also Silver Chrysler Plymouth, Inc., 518 F.2d 751, 754 (1975), holding

that a former attorney of a client should not be required to sustain a heavy burden of proof in order to establish he did not have access to confidential information of that client:

"Thus, while this Circuit has recognized that an inference may arise that an attorney formerly associated with a firm himself received confidential information transmitted by a client to the firm, that inference is a rebuttable one. Laskey Bros. of W. Va., Inc. v. Warner Bros. Pictures, 224 F.2d 824, 827 (2d Cir. 1955), cert. denied, 350 U.S. 932, 76 S.Ct. 300, 100 L.Ed.2d 814 (1956); United States v. Standard Oil Co., 136 F.Supp. 345, 364 (S.D.N.Y. 1955). And in Laskey, the court cautioned that:

'It will not do to make the presumption of confidential information rebuttable and then to make the standard of proof for rebuttal unattainably high. This is particularly true where, as here, the attorney must prove a negative, which is always a difficult burden to meet'." (emphasis supplied) 518 F.2d at 754.

The District Court has concluded without evidence that Mr. Meeker had access to confidential information, and having made that unfounded determination, held that Mr. Meeker was irrebuttably presumed to have received confidential information.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the order of the United States District Court for the Southern District of New York disqualifying the law firm of Delson & Gordon, and Mr. Frederick W. Meeker, an associate of that firm, from representing the plaintiffs, The Government of India and The Food Corporation of India, in this action be reversed and the motion for disqualification be set aside.

Respectfully submitted,

DELSON & GORDON
Attorneys for Plaintiffs-Appellants
The Government of India and
The Food Corporation of India

Of Counsel:

Norman Moloshok
Alvin H. Meadow

ADDENDUM*

	<u>Page</u>
1. Letter dated October 12, 1976 by Delson & Gordon to United States District Court Judge Robert J. Ward forwarding copy of Amended Complaint	A1
2. Plaintiffs' Proposed Amended Complaint	A3
Exhibit "A"	A18
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3. Letter dated October 18, 1976 to United States District Court Judge Robert J. Ward from Fried, Frank, Harris, Shriver & Jacobson opposing the filing of Plaintiffs' Amended Complaint	A32

* The District Court concededly has perused these documents upon their receipt prior to rendering its decision. The proposed Amended Complaint by order of the court has not been made part of the record, but is annexed to this brief so the Court may more fully understand the claim of the plaintiffs herein (3a).

A 1

Letter from Delson & Gordon to District Judge Ward

October 12, 1976

Honorable Robert J. Ward
United States District Court
United States District Courthouse
Foley Square
New York, New York 10007

Re: Government of India and The Food Corporation of
India v. Cook Industries, Inc. and Cook & Co.
76 Civ. 2001

Dear Judge Ward:

We are taking the liberty of enclosing a copy of a proposed amended complaint in the above-entitled matter. We respectfully request that the Court authorize the filing of the original of this amended complaint.

In view of the pending disqualification motion and the objection of the defendants to the filing of the amended complaint, an information copy of which has been forwarded to them, we have sought to informally ask the Court for permission to file the amended complaint, although the defendants' time to answer the original complaint has been extended by stipulation from time to time.

The proposed amended complaint which is similar to that served in the companion actions more fully sets forth the causes of action and lists the 187 shipments of grain to India by Cook which available records from India indicate were short-weighted and non-conforming to contract. This schedule is identical to that forwarded to the defendants by the Embassy, pursuant to discussion with the Court at the hearing on September 3, 1976. In connection with the pending motion, it is pointed out that only three of the shipments

A 2

Letter from Delson & Gordon to District Judge Ward

- 2 -

listed involved vessels loaded at Cook's only export elevator, the Bayside Elevator, at Reserve, Louisiana.

Respectfully yours,

NM/eps
Encl.

Norman Moloshok

c.c. Messrs. Fried, Frank, Harris,
Shriver & Jacobson
120 Broadway
New York, New York

Amended Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

THE GOVERNMENT OF INDIA and	:	
THE FOOD CORPORATION OF INDIA,	:	76 Civ. 2001 (RJW)
Plaintiffs,	:	
-against-	:	<u>AMENDED COMPLAINT</u>
COOK INDUSTRIES, INC. and	:	PLAINTIFFS DEMAND
COOK AND COMPANY,	:	<u>TRIAL BY JURY</u>
Defendants.	:	

- - - - -x

Plaintiffs, by their attorneys, Delson & Gordon,
for their amended complaint, allege:

1. Plaintiff The Government of India is a sovereign state.
2. Plaintiff The Food Corporation of India ("The Food Corporation") is an agency of The Government of India, is a statutory corporation of India, and has its principal place of business in New Delhi, India. The Food Corporation is engaged in the business of purchasing grain for importation into India.
3. Upon information and belief, defendant Cook Industries, Inc. is a corporation incorporated under the laws

of the State of Delaware with a principal office for the transaction of business in the County of New York, State of New York, and is engaged in the business of grain merchandising, including the export of grain in foreign commerce.

4. Upon information and belief, defendant Cook and Company is a corporation or other business entity which was doing business in the County of New York, State of New York, during the times at which the causes of action alleged hereinafter arose, and is or was engaged in the business of grain merchandising, including the export of grain in foreign commerce.

5. Jurisdiction is founded upon diversity of citizenship, the matter in controversy exceeding the sum of \$10,000., exclusive of interest and costs.

6. The plaintiffs bring this action on behalf of themselves and all agencies of The Government of India which have purchased grain from the defendants from 1964 to date as hereinafter alleged.

AS AND FOR A FIRST CAUSE OF ACTION

7. From time to time commencing in or about 1964 and continuing up to the present, said plaintiffs and the de-

Plaintiffs entered into a series of purchase contracts whereby the defendants agreed to sell and the plaintiffs agreed to purchase specified grades of grain in quantities aggregating more than 5,230,000 tons which were to be delivered in more than two hundred eighty-five (285) separate shipments. Each such purchase contract provided in part that construction and performance thereof would be governed by the laws of the State of New York. Annexed hereto as Exhibit "A" is a representative specimen of the purchase contracts between the plaintiffs and the defendants.

8. In and by the respective purchase contracts, the defendants agreed to furnish the plaintiffs with weight certificates prepared by weighers licensed by the United States Department of Agriculture certifying the quantity of the grain which the defendants delivered and caused to be loaded on the vessels for shipment to India, as well as inspection certificates prepared by inspectors licensed by the United States Department of Agriculture showing the grades of the grain so delivered and loaded and certifying that said grades were determined in accordance with the Official Grain Standards of the United States.

9. Pursuant to each such contract, the defendants delivered grain and caused the same to be loaded on vessels

at various ports in the United States for shipment to India, and the plaintiffs received said shipments in India. Payment was made by an irrevocable letter of credit drawn on a banking institution situated in New York, New York, on the basis of shipping documents including weight and inspection certificates, bills of lading and signed commercial invoices certifying that the grain which the defendants had delivered and caused to be loaded on the vessels for shipment to India conformed to the weight, grade and quality specifications set forth in the respective purchase contracts.

10. Upon delivering the aforesaid weight and inspection certificates to the plaintiffs, the defendants represented to the plaintiffs that the grain which the defendants had delivered and caused to be loaded on the vessels for shipment to India did in fact conform to the weight, grade and quality specifications set forth in the corresponding purchase contracts as well as the weights and grades set forth on the aforesaid weight and inspection certificates.

11. Prior to entering into the respective purchase contracts, the defendants represented to the plaintiffs that

(a) the grain which they intended to deliver and cause to be loaded on the vessels for shipment to India

would conform to the weight, grade and quality specifications set forth in the respective purchase contracts, and that

(b) the defendants would not influence or interfere with the faithful performance of the aforesaid weighers and inspectors in weighing and inspecting the aforesaid shipments of grain.

12. In truth and in fact, the aforesaid representations made by the defendants were false at the time they were made.

13. In truth and in fact, at the time the aforesaid representations were made, they were known by the defendants to be false, and defendants made said representations with the intent to deceive and defraud the plaintiffs and to induce the plaintiffs to enter into and thereafter to fully perform the respective purchase contracts.

14. In truth and in fact, at the time they entered into the respective purchase contracts, the defendants had the undisclosed intention not to fully perform same.

15. At the time the aforesaid representations were made, the plaintiffs believed them to be true, relied thereon and were induced thereby to enter into and thereafter to fully perform the respective purchase contracts.

16. Plaintiffs would not have entered into the respective purchase contracts had they known that at the time the defendants entered into said contracts,

(a) the aforesaid representations were false; or

(b) the defendants had the undisclosed intention not to fully perform the respective purchase contracts; or

(c) the defendants had entered into the wrongful and unlawful combination, scheme and conspiracy hereinafter alleged.

17. In truth and in fact, the defendants, by and through their agents, servants and employees acting within the scope of their agency and employment, had entered into a wrongful and unlawful combination, scheme and conspiracy involving numerous weighers and inspectors licensed by the United States Government, grain elevator personnel, owners and crew members of the vessels which transported the aforesaid shipments of grain and others to deceive and defraud the plaintiffs, and, in particular, to embezzle, steal, take away, and conceal by fraud and deception with intent to convert to their own use, grain for which the plaintiffs had contracted with the defendants, and for which plaintiffs

paid the defendants as alleged herein, which combination, scheme and conspiracy is more fully set forth hereinafter.

18. The defendants had entered into the aforesaid wrongful and unlawful combination, scheme and conspiracy prior to the time they entered into the respective purchase contracts, and the plaintiffs were unaware of the existence and continuing nature of said combination, scheme and conspiracy or the defendants' involvement therein at the time the plaintiffs entered into the respective purchase contracts.

19. Pursuant to and in furtherance of the aforesaid wrongful and unlawful combination, scheme and conspiracy, the defendants, by and through their agents, servants and employees acting within the scope of their agency and employment, intended to at the time they entered into the respective purchase contracts and did in fact, in violation of applicable statutes and regulations:

(a) cause or permit the aforesaid weight and inspection certificates, bills of lading and signed commercial invoices to be falsified as hereinafter alleged, with the intention of deceiving and defrauding the plaintiffs and inducing the plaintiffs to receive shipments of grain of lesser quantities, grades and qualities than those specified in the respective purchase contracts, and to pay the defen-

dants for the quantities, grades and qualities specified in said contracts;

(b) cause or permit weighers licensed by the United States Department of Agriculture to prepare and issue false and fraudulent certificates attesting to the quantities of grain which the defendants delivered and caused to be loaded on the vessels for shipment to India;

(c) cause or permit the aforesaid weighers to manipulate the scales used to weigh grain being loaded on the aforesaid vessels, thereby causing lesser quantities of grain to be loaded on said vessels than those specified in the respective purchase contracts;

(d) cause or permit the aforesaid weighers to manually bypass the scales used to weigh grain, and to register weights on the aforesaid certificates when in fact the grain was not weighed and not loaded on the vessels for shipment to India;

(e) cause or permit inspectors licensed by the United States Department of Agriculture to issue false and fraudulent inspection certificates attesting to the grades of the grain which the defendants delivered and caused to be loaded on the vessels for shipment to India, thereby permitting grain of lesser grades, qualities and values than those specified in the respective purchase contracts and set

forth on the respective inspection certificates to be loaded on the vessels for shipment to India;

(f) cause or permit the aforesaid inspectors to prepare and issue false and fraudulent inspection certificates attesting to the condition of the grain which the defendants delivered and caused to be loaded on the vessels for shipment to India, thereby permitting infested and contaminated grain to be loaded on said vessels;

(g) cause or permit the aforesaid inspectors to prepare and issue false and fraudulent inspection certificates attesting to the sanitary condition of the holds of the vessels on which the aforesaid grain was loaded for shipment to India, whereas the holds of said vessels were unsanitary and the grain loaded therein became infested and contaminated;

(h) cause or permit the aforesaid false entries on the weight and inspection certificates to be incorporated in the bills of lading delivered to the plaintiffs;

(i) cause or permit the aforesaid false entries on the weight and inspection certificates to be incorporated in the signed commercial invoices delivered to the plaintiffs; and

(j) engage in other tricks, schemes and devices pursuant to and in furtherance of the wrongful and

unlawful combination, scheme and conspiracy alleged herein, and the concealment and cover-up thereof.

20. By reason of the aforesaid wrongful and unlawful combination, scheme and conspiracy, and the acts of the defendants pursuant thereto and in furtherance thereof, including the concealment and cover-up of such wrongful and unlawful conduct accomplished by means of submitting false weight and inspection certificates to the plaintiffs, the plaintiffs received shipments of grain of lesser quantities, grades and qualities than those specified in the respective purchase contracts.

21. In particular, the shipments of grain as set forth in the schedule annexed hereto as Exhibit "B" did not conform to the weight, grade and quality specifications set forth in the respective purchase contracts or the weights and grades set forth on the aforesaid weight and inspection certificates. With respect to each shipment therein described, the annexed schedule sets forth the name of the vessel carrying the shipment, the departure date, the load port, the approximate arrival date, the discharge port, the type of food-grain involved, the quantity of metric tons shortweighed, and the other defects in said shipment resulting in the misgrading, quality deficiencies, and infestation

or contamination of said shipment.

22. In receiving and paying for the aforesaid shipments, the plaintiffs relied in good faith upon the aforesaid weight and grade certificates prepared and issued by weighers and inspectors licensed by the United States Department of Agriculture, which documents certified that the grain which the defendants had delivered and caused to be loaded on the vessels for shipment to India conformed to the weight, grade and quality specifications set forth in the respective purchase contracts. At the time of the delivery of each shipment of grain, the plaintiffs were unaware and had no means of discovering that said weight and inspection certificates had been falsified as herein alleged.

23. In addition to the shipments set forth in the annexed schedule, numerous other shipments covered by the aforesaid purchase contracts between the plaintiffs and the defendants did not conform to the weight, grade and quality specifications set forth in said purchase contracts. By reason of the wrongful and unlawful combination, scheme and conspiracy hereinabove alleged, and the actions of the defendants pursuant thereto and in furtherance thereof, the full extent of the deficiencies in such other shipments have not been itemized to date.

24. By reason of the foregoing, the plaintiffs have sustained damages in the sum of Twenty Million (\$20,000,000.) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION

25. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs 1-23 hereinabove with the same force and effect as if herein set forth at length.

26. In delivering such non-conforming grain to the vessels for shipment to India and causing the same to be loaded thereon, the defendants committed breaches of each separate and distinct purchase contract relating to the shipments set forth in the schedule annexed hereto as Exhibit "B".

27. The plaintiffs have complied with all conditions precedent to the maintenance of the causes of action set forth herein, including but not limited to giving the defendants notice that they had breached the respective purchase contracts within a reasonable time of the plaintiffs' discovery that the aforesaid weight and inspection certificates were false and that the aforesaid shipments of grain did not conform to the entries on said certificates at the

time of loading.

28. By reason of the defendants' breaches of each separate and distinct purchase contract relating to the shipments set forth in the schedule annexed hereto as Exhibit "B" occurring within the applicable period of limitations, the plaintiffs have sustained damages in the sum of Ten Million (\$10,000,000.) Dollars.

AS AND FOR A THIRD CAUSE OF ACTION

29. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs 1-23 and 26-27 hereinabove with the same force and effect as if herein set forth at length.

30. Beginning in or about 1964 and continuing up to the present, the plaintiffs paid to the defendants sums of money for specific weights, grades and qualities of grain set forth in the respective purchase contracts between the plaintiffs and the defendants. The defendants accepted said sums under the false pretenses that the weights, grades and qualities contracted and paid for had in fact been delivered and loaded on the vessels for shipment to India.

31. In truth and in fact, the grain which the defendants delivered and caused to be loaded on the vessels

for shipment to India did not conform to the weight, grade and quality specifications set forth in the respective purchase contracts.

32. By reason of the defendants' wrongful, unlawful and fraudulent conduct as hereinabove alleged, the defendants have been unjustly enriched in the sum of Twenty Million (\$20,000,000.) Dollars.

AS AND FOR A FOURTH CAUSE OF ACTION

33. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs 1-23, 26-27 and 30-31 hereinabove with the same force and effect as if herein set forth at length.

34. Beginning in or about 1964 and continuing up to the present, the freight charges which the plaintiffs were required to pay to various owners or disponent owners of vessels in which the aforesaid shipments of grain were carried were based upon the aforesaid false and fraudulent weight certificates and bills of lading.

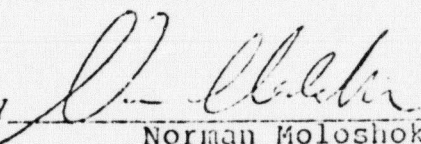
35. As a result of the foregoing, the plaintiffs paid freight charges based upon weights of grain far in excess of those which the defendants had actually delivered and caused to be loaded on the vessels for shipment to India.

36. By reason of the foregoing, the plaintiffs have sustained damages in the sum of Five Million Five Hundred Thousand (\$5,500,000.) Dollars.

WHEREFORE, plaintiffs demand judgment against the defendants on the First Cause of Action in the sum of Twenty Million (\$20,000,000.) Dollars, on the Second Cause of Action in the sum of Ten Million (\$10,000,000.) Dollars, on the Third Cause of Action in the sum of Twenty Million (\$20,000,000.) Dollars, and on the Fourth Cause of Action in the sum of Five Million Five Hundred Thousand (\$5,500,000.) Dollars, or such greater sums as may be shown, all as compensatory damages; and in the sum of Ten Million (\$10,000,000.) Dollars as exemplary damages, with interest thereon, together with the costs and disbursements of this action.

Dated: New York, New York
September 29, 1976

DELSON & GORDON
Attorneys for Plaintiffs

By 
Norman Moloshok
A Member of the Firm
230 Park Avenue
New York, New York 10017
(212) 686-8030

Form ISM No. 1003 (Rev.)

GOVERNMENT OF INDIA
India Supply Mission
2536 Massachusetts Avenue N.W.
Washington D.C. 20008

CONFIRMATION OF PURCHASE

July 7, 1975

- (1) BROUGHT OF:
- (2) SOLD TO:
- (3) COMMODITY:
- (4) QUANTITY:
- (5) PRICE:
- (6) SHIPMENT
- (7) AREA OF DELIVERY:
- (8) PAYMENT:

FOR AND ON BEHALF OF
THE FOOD CORPORATION OF INDIA

ACCEPTED:

(V.K. Gupta)
Assistant Director

(SELLER)

Copy to:

1 & 2 Supplier	8 Vessel File
3 Bank	9-11 Ministry of Agriculture, Deptt. of Food
4 Accounts	12-19 FCI
5 Contract File	20-21 Port Consignee
6 Kardex	22 ISM Shipping Agent
7 Tender File	

CONFIRMATION OF PURCHASE:
PAGE 2

ANNEXURE

- (9) This contract, which includes further provisions on these pages, is made in duplicate, one copy of which shall be signed by Seller and returned to Buyer immediately.
- (10) QUALITY AND ORIGIN: The quality and condition of the grain is to be in accordance with the "Official Grain Standards of the United States." All grain supplied must have been grown in the Continental United States.
- (11) DETERMINATION OF WEIGHTS AND GRADES: The weights of grain delivered hereunder shall be determined and certified at Seller's expense by a weigh-master at the port at which delivery is made. The grade and condition of the grain shall be determined and certified at Seller's expense at such port at the time of delivery by an inspector licensed under the United States Grain Standards Act and in accordance with and by reference to the Official Grain Standards of the United States. A supplementary certificate of the protein content of wheat shall also accompany the above certificates. Buyer shall have the option to require additional independent inspection of the weight and condition of grain by a commercial inspection firm at his own expense or by Government of India Agency.
- (12) DELIVERY TERMS: Buyer's shipping agent shall give Seller at least ten days notice of vessel's name, expected readiness to load and approximate quantity of cargo required. Within forty-eight hours after receipt of the said notice but in any event not later than eight days prior to the date of expected readiness to load, the Seller shall nominate the loading port by teletype or telegraph to the buyer. The Seller shall maintain liaison with Buyer's shipping agent so as to keep himself informed of the likely arrival date of vessel. Vessel to be loaded in normal rotation and in accordance with the custom of the port and elevator tariff when Buyer's vessel is ready to load (but shall not be compelled, however, to commence loading prior to first date stated above for delivery, or earlier than said notice date), and shall maintain loading vessel at full capacity (including overtime and Saturday afternoons, Sunday's and holidays, if required by Buyer and subject to Buyer's bearing overtime cost). Should Seller fail to commence or maintain continuity of loading as aforesaid, he shall pay to Buyer an amount equal to Buyer's loss of despatch earned or demurrage payable by Buyer, consequent of Seller's failure. Should Seller fail to provide the full amount of grain contracted for, he shall pay to Buyer the equivalent dead-freight hereon as well as any other damages suffered by Buyer."
- (13) DELAYS: Time is of the essence of the contract, subject to an extension of time corresponding to any period of delay that is attributable to 'Force Majeure'. For the purpose of this contract the terms 'Force Majeure' is defined as: Acts of God, War, Hostilities, Acts of Public Enemy, Civil Commotion, Sabotage, Acts of Government (including, but not restricted to, any preference, priority, allocation or limitation order and any export or import control), fires, floods, explosions or other catastrophies, accidents, epidemics, quarantine restrictions, strikes or other labour troubles and embargoes. In any such event the time by which it is required to perform any acts or accept risks hereunder, shall be correspondingly extended subject however, to the party claiming such extension

CONFIRMATION OF PURCHASE:
PAGE 3

notifying the other party promptly of the occurrence of the 'Force Majeure' contingency and providing reasonable proof thereof, if so required.

If loading shall not have commenced prior to the last day of contract delivery period (as such time may be extended by 'Force Majeure') by reason of Buyer's delay in nominating the vessel, or the late arrival of Buyer's vessel, Buyer shall pay to Seller as compensation of Seller's carrying charges a sum equal to 1/25th cent per bushel per day for storage and insurance, plus interest per annum at the prime rate prevailing as of date of this contract on the total purchase price (including subsidy, if any), from the day following the last loading day of the said delivery to the day the vessel is tendered and accepted for loading, but Seller shall remain liable to load the grain in all respects subject to the terms and conditions thereof, when the vessel shall be made available by the Buyer for the purpose."

LIMITATIONS OF CLAIMS: The Seller agrees that any claims for carrying charges, insurance and interest, arising from this agreement must be made within ninety (90) days from the completion of loading aboard ship, of the commodity referred to herein and suit must be filed within six (6) months from completion of loading, statutory limitations notwithstanding.

- (14) **GIFTS AND REWARDS:** Any commission, gift, reward or advantage given, promised or offered by or on behalf of the Seller (other than remuneration regularly payable to a continuing representative of the Seller) in relation to the obtaining of this contract, or its administration by Buyer, shall, in addition to any criminal liability which may arise, subject Seller to the cancellation of this and all other unshipped contracts with Seller (at Buyer's option), and also to payment of any loss or damage suffered by Buyer in connection with repurchase elsewhere of the cancelled material and generally arising out of breach of the provisions thereof.
- (15) **CONSTRUCTION AND PERFORMANCE:** Construction and performance of this agreement shall be governed by the laws of the State of New York.
- (16) The following documents are required to be furnished by the Seller along with invoices as per clause (8):
 - (i) Seller's signed commercial invoice in original and sixteen copies thereof (Certificate of Origin either to be endorsed on the invoice or attached to it).
 - (ii) Weight Certificate in original with ten copies thereof on which it is indicated that weight of the commodity was determined by a licensed weigh-master at point of loading vessel in the United States.
 - (iii) Inspection certificate of licensed inspector in original with ten copies thereof showing grade and endorsed that the grade was determined in accordance with official Grain Standards of the United States. The Certificates should inter alia indicate- (1) weight per bushel (2) percentage of moisture content (3) percentage of foreign material (4) percentage of shrunken and broken kernels (5) percentage of damaged kernels (6) dockage,

CONFIRMATION OF PURCHASE:
PAGE 4

if 0.5 per cent or more (7) percentage of the total defects (damaged kernels, foreign material and shrunken and broken kernels).

- (iv) Official State Certificate of Protein Content of wheat with ten copies thereof indicating "Sample identified by licensed inspector as a portion of that used in the inspection and grading of the wheat as loaded aboard the (Name of Vessel)." In the case of the F.O.B. shipment from United States East Coast and United States Gulf Coast, a certificate issued by a recognized laboratory would be acceptable.
- (v) One signed Original and 2 photostat copies of the Mates Receipt, and 8 non-negotiable copies of Bill of Lading.
- (vi) Charter Party Bills of Lading are also acceptable.
- (17) The Supplier will also furnish to the Director General, India Supply Mission, Washington D.C. the following documents immediately after the vessel has completed loading of the cargo:

OFFICIAL SEDIMENTATION TEST VALUE CERTIFICATE
IN ORIGINAL WITH EIGHT COPIES THEREOF.

/sb

Stencil cut by S. Berry - 1,000 copies - V.K. Gupta AD(A)

Exhibit "B" to Amended Complaint

COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Alkor	11/25/64	Corpus Christi	12/64	Bombay	Wheat	32.657	
Alexandra V.	6/6/65	Houston	6/65	Madras Calcutta	"	700.092	
Alkaid	6/17/65	Houston	12/65	Kandla	Wheat	.809	
Augvald	3/11/65	Houston	4/65	Bhavnagar	Wheat	20.242	
Beech Bank	11/13/65	Houston	12/65	Calcutta	Wheat	364.777	
Cantigny	3/31/65	Houston	5/65	Bombay	Wheat	285.154	
Cape Aruxos	3/26/65	Houston	5/65	Kandla	Wheat	3.129	
Capetan Carras	3/16/65	Houston	5/65	Vizag.	Wheat	117.148	
Fotini	6/18/65	Houston	7/65	Madras Calcutta	Wheat	216.013	
Hudson	12/19/64	Houston	1/65	Madras Calcutta	Wheat	501.693	
Irish Sycamore	9/24/65	Houston	11/65	Vizag.	Wheat	113.003	
Jupiter	11/13/65	Houston	12/65	Vizag. Calcutta	Wheat	383.803	
Mariana	5/21/65	Houston	6/65	Bombay	Wheat	5348.441	
Marine Progress	11/15/65	Houston	12/65	Kandla	Wheat	121.456	
Oceanic Spray	4/23/65	Kalama	5/65	Madras Calcutta	Wheat	10.714	
Russell L.	11/21/64	Beaumont	1/65	Madras	Wheat	404.635	
With Explorer	12/20/64	Beaumont	2/65	Madras	Wheat	489.192	

COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Transbay	3/15/65	Houston	4/65	Bombay	Wheat	40.622	
Trinity	9/13/65	Houston	10/65	Madras	Wheat	29.680	
Volusia	11/6/65	Houston	12/65	Vizag. Calcutta	Wheat	644.246	
Wellesley Victory	12/7/64	Houston	1/65	Navlakhi	Wheat	76.233	Quality Complaint
Aliki Livanos	1/12/66	Portland	2/66	Vizag. Calcutta	Wheat	152.145	
Erne Bank	2/3/66	Houston	3/66	Vizag. Calcutta	Wheat	217.259	
Fotini	1/10/66	Houston	2/66	Madras	Wheat	221.880	
Gretafield	8/12/66	Vancouver	9/66	Madras	Wheat	762.905	
Hudson	2/25/66	Vancouver	3/66	Madras Calcutta	Wheat	437.509	
Jag Jiwan	2/17/66	Astoria	3/66	Madras	Wheat	121.010	
Leto	2/17/66	Houston	3/66	Madras	Wheat		Contrast- ing Classes Complaint
Lossie Bank	4/22/66	Houston	5/66	Madras	Wheat	979.355	
Maratha Enterprise	2/6/66	Houston	3/66	Cochin	Wheat	305.918	
Norina	2/4/66	Houston	3/66	Kandla	Wheat	15.826	
North Bank	2/15/66	Vancouver	3/66	Vizag. Calcutta	Wheat	118.674	
Orient City	2/23/66	Kalama	3/66	Madras Calcutta	Wheat	176.558	
Penn Carrier	1/18/66	Houston	2/66	Bombay	Wheat	89.072	
Penn Sailor	3/1/66	Houston	4/66	Bombay	Wheat	79.559	

COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Platte	9/24/66	New Orleans	10/66	Kandla	Wheat		Quality Complaint
Rhythme	6/3/66	Houston	7/66	Vizag.	Wheat	77.837	
Yannis	6/8/66	Houston	7/66	Madras Calcutta	Wheat	194.632	Quality & Infestation Complaint
York	1/18/66	Houston	2/66	Bombay	Wheat	78.835	
Bharata Jayanti	8/20/67	Destrehan	10/67	Bombay	Wheat	86.874	
Columbia	2/12/67	Pascagoula	3/67	Calcutta Kandla	Sorghum	3.760	
Delian Spirit	3/10/67	Houston	4/67	Bombay	Sorghum	19.124	
Elias Xilas	2/11/67	Kalama	3/67	Vizag. Calcutta	Wheat	58.127	
Engedi	7/15/67	Houston	9/67	Madras Calcutta Vizag.	Sorghum	207.174	
Enotis	11/11/67	Destrehan	12/67	Madras	Sorghum	155.882	Infestation Complaint
Entopan	8/23/67	Houston	11/67	Vizag. Calcutta	Sorghum	12.592	
Hadjit Sakos	8/10/67	Corpus Christi	9/67	Madras Calcutta	Sorghum		Infestation Complaint
Helena Venizelos	6/11/67	Houston	8/67	Madras Calcutta	Sorghum	460.988	
King Minos	6/16/67	Houston	7/67	Navlakhi	Wheat	108.560	
Leontios	3/1/67	Port Arthur	4/67	Madras Calcutta	Sorghum	271.903	
Lutetian	10/27/67	Houston	12/67	Vizag. Calcutta	Sorghum	135.174	

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COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Pine Bank	8/4/67	Houston	9/67	Tuticorin Calcutta	Wheat	137.258	
Socrates	9/7/67	Houston	10/67	Navlakhi	Sorghum	128.331	
Transerie	3/15/67	Portland	4/67	Bombay	Wheat	2.767	
Windsor Victory	8/3/67	Destrehan	9/67	Cochin	Wheat		Infestation Complaint
York	7/30/67	Destrehan	9/67	Bombay	Wheat	139.061	
Arcturus	2/7/68	New Orleans	5/68	Madras	Wheat	749.566	Dockage Complaint
Cape Nerita	2/27/68	Houston	4/68	Madras Calcutta	Wheat	79.261	
Delian Leto	4/4/68	Houston	5/68	Bombay	Wheat	149.666	
Esperos	1/11/68	Houston	2/68	Kozhikode	Wheat		Infestation Complaint
Frixos	1/17/68	Houston	3/68	Bombay	Wheat	418.739	
Jagat Vijeta	12/7/67	Houston	1/68	Bombay	Wheat	334.700	Quality Complaint
Maple Bank	1/18/68	Portland	2/68	Madras Calcutta	Wheat	392.133	
Marichandros	1/26/68	Houston	3/68	Madras Calcutta	Wheat	254.166	
Mina D. Amico	5/15/68	Houston	6/68	Kandla	Wheat	45.182	
Norwalk	3/11/68	Houston	5/68	Madras	Sorghum	104.995	Infestation Complaint
Sabine	3/7/68	Houston	5/68	Bombay Bhavnagar	Wheat	784.393	

COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Silver Leaf	2/20/68	Houston	4/68	Vizag.	Wheat	190.409	
Teviot Bank	2/16/68	Houston	3/68	Madras	Sorghum	195.833	Infestation Complaint
Jag Kisan	7/30/69	Portland	9/69	Madras	Wheat	56.014	
Jagat Mohini	7/3/69	Houston	8/69	Vizag.	Wheat	549.057	
Midlake	7/31/69	Houston	9/69	Bombay	Wheat	313.388	
Overseas Carrier	7/16/69	Brownsville	8/69	Bombay	Sorghum	8.325	
Penn Ranger	7/16/69	Houston	8/69	Madras	Wheat	134.271	
Platte	4/4/69	Houston	5/69	Kandla Bombay	Wheat	325.946	
Ram Bam	3/27/69	Houston	5/69	Calcutta Madras	Wheat	166.941	
Seafarer	3/10/69	Vancouver	4/69	Madras Calcutta	Wheat	71.122	
Barbara	7/2/70	Houston	8/70	Bombay	Wheat	88.533	
Chennai Perumai	8/27/70	Houston	10/70	Bombay	Wheat	933.003	
Chennai Sadhanai	1/24/70	Astoria	2/70	Madras	Wheat	80.607	
Demetra	3/17/70	Vancouver	4/70	Vizag. Calcutta	Wheat	308.766	
Devaraya Jayanti	1/26/70	Houston	3/70	Madras	Wheat	202.292	
Eagle Charger	12/16/69	Houston	1/70	Kandla	Wheat	35.389	

COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Esso Jamestown	6/17/70	Houston	8/70	Calcutta	Wheat	876.961	
Galani	2/4/70	Portland Astoria	12/70	Vizag Calcutta	Wheat	369.006	
Gowan Bank	1/3/70	Houston	2/70	Vizag.	Wheat	564.257	
Maryland Trader	6/12/70	Houston	2/70	Bombay	Wheat	107.942	
Merrimac	11/12/70	Portland Kalama	12/70	Calcutta	Wheat	354.415	
Nausicaa	2/20/70	Vancouver	3/70	Vizag. Calcutta	Wheat	262.501	
O. Willamette	1/11/70	Houston	2/70	Bombay	Wheat	38.270	Quality Complaint
Shajahan Jayanthi	7/26/70	Reserve	9/70	Madras	Wheat	184.442	
Sincerity	3/4/70	Houston	4/70	Bombay	Wheat	96.465	
State of Mysore	8/20/70	Myrtle Grove	9/70	Madras Calcutta	Wheat	91.935	
Western Hunter	1/8/70	Houston	2/70	Calcutta	Wheat	236.074	
Amstel Hoeck	1/23/71	Reserve	3/71	Vizag. Calcutta	Wheat	521.481	
Aristofanis	11/27/71	Portland	12/71	Vizag. Calcutta	Wheat	333.943	
Devaraya Jayanti	9/27/71	Houston	11/71	Kozhikode Vizag	Wheat	159.405	
Jagat Padmini	12/31/70	Houston	2/71	Calcutta Madras	Wheat	303.766	
Kynthia		Portland	6/71	Calcutta Madras	Wheat	9.995	
O. Willamette	9/11/71	Myrtle Grove	10/71	Calcutta	Wheat	1513.947	

COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Overseas Carrier	5/20/71	Houston	7/71	Madras	Wheat	95.976	
Kynthia	11/2/71	Portland	1/72	Calcutta	Wheat	107.104	
Aghios Spyridon	10/2/73	Corpus Christi	12/73	Vizag. Calcutta	Wheat	97.556	Infestation, Iron Filings and/or etc.
Capetan Psarros	11/5/73	Pascagoula	12/73	Bombay	Wheat	67.499	
Devaraya Jayanti	4/25/73	Portland	5/73	Madras Nagapat.	Wheat	452.068	
Jag Ravi	9/25/73	San Francisco	10/73	Vizag. Calcutta	Wheat	76.163	
Johnny	3/14/73	Vancouver Astoria	4/73	Calcutta	Wheat	54.831	
Konistra	9/12/73	San Francisco	10/73	Vizag. Calcutta	Wheat	284.840	
Pitria	11/9/73	Reserve	12/73	Vizag. Calcutta	Wheat		Infestation, Iron Filings and/or etc.
Rena	10/25/73	New Orleans	12/73	Cochin	Wheat		Infestation, Iron Filings and/or etc.
Singapore Fortune	9/19/73	San Francisco	10/73	Calcutta	Wheat		Infestation-Complaint
Theometor	3/4/73	Astoria Portland	4/73	Bombay	Wheat	2.460	

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<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Assilis Katsikis	10/8/73	San Francisco	11/73	Tuticorin Calcutta	Wheat	122.625	
Ashva Thirth	9/27/73	Houston	12/73	Cochin	Wheat	336.809	Infestation, Iron Filings and/or etc.
Calizo	7/30/74	Beaumont	9/74	Bombay	Wheat	313.778	
Calha Progress	9/30/74	Longview	10/74	Kandla	Wheat	40.480	
Calha	8/23/74	Stockton	10/74	Bombay	Wheat	126.931	
Calha	8/31/74	Portland	8/74	Bombay	Wheat	438.324	
Calha Calicousis	9/2/74	Portland	10/74	Vizag.	Wheat	202.523	
Ashva Prayash	2/7/74	Houston	3/74	Vizag. Calcutta	Sorghum	185.417	Quality Complaint Major and Minor Pest Infestation
Calizo	11/18/75	Sorel	12/75	Bombay	Wheat	186.629	
Calha	11/24/75	Sorel Montreal Toledo	12/75	Vizag.	Wheat	64.015	Dockage Complaint Insect Infestation, Contrasting Classes
	2/24/75	Beaumont	4/75		Wheat		Infestation Complaint
	3/17/75	Houston	5/75	Bombay	Wheat	428.228	
	6/13/75	Houston	7/75	Tuticorin Rozi	Wheat	835.993	Infestation Complaint

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
Chennai Muyarchi	11/29/74	Tacoma Kalama	2/75	Rozi	Wheat	414.023	
Chennai Muyarchi	9/12/75	Vancouver	10/ 5	Rozi	Wheat	520.688	
Chennai Dokam	7/8/75	Destrehan	8/75	Tuticorin	Wheat		Infesta- tion Complaint
Chennai Perumai	3/12/75	Beaumont	5/75	Tuticorin Madras	Wheat	679.763	
Amodar Gen'l T.J. Park	5/22/75	Portland Vancouver	6/75	Madras	Wheat	485.395	
Devaraya	1/9/75	Houston	2/75	Bombay	Wheat	118.740	Infesta- tion Complaint
Pico	1/19/75	Houston	3/75	Bombay	Wheat	175.319	
Unix	2/6/75	Houston	3/75	Vizag.	Wheat	240.610	
Ag Doot	8/11/75	Portland Vancouver	9/75	Vizag.	Wheat	286.025	
James Stove	1/31/75	Houston	3/75	Cochin	Wheat	58.543	
Anishka	5/6/75	Houston Corpus Christi	6/75	Tuticorin Madras	Wheat	1109.376	Excess Dockage Insect Infesta- tion
Epanto	4/26/75	Beaumont	6/75		Wheat		Iron Filings Complaint
Mount Explorer	6/19/75	Houston	7/75		Wheat	255.644	
BO Duke	4/21/75	Beaumont	5/75	Calcutta	Wheat		Infesta- tion, Iron Filings and/or etc.
Olympic Challenger	2/29/75	Houston	3/75	Rozi Navlakhi Veraval	Wheat	954.813	

COOK

<u>Vessel</u>	<u>Departure</u>	<u>Load Port</u>	<u>Arrival</u>	<u>Discharge Port</u>	<u>Food Grain</u>	<u>Metric Tons Short</u>	<u>Other Defects</u>
nda	4/19/75	Vancouver Kalama	5/75	Bombay	Wheat	2.987	Infesta- tion Complaint
enelope	11/19/75	Montreal	12/75	Vizag.	Wheat	183.259	Insect Infesta- tion, Contrast- ing Classes
olyhmnia	4/19/75	Houston	6/75	Bombay	Wheat	925.246	
amudra Gupta	7/17/75	Houston	9/75	Bombay	Wheat		Iron Filings
atya Kamal	9/28/75	Vancouver	10/75	Mangalore Vizag.	Wheat	29.761	Heat Damaged
hacklefort	4/9/75	Beaumont	6/75	Calcutta	Wheat	1037.947	
ureness	1/29/75	Houston	3/75	Madras	Wheat	201.856	
ranseastern	7/5/75	Houston	9/75	Kandla	Wheat		Infesta- tion Complaint
anupma	5/4/76	Port Arthur	6/76	Bombay	Wheat		Infesta- tion Complaint
Chennai Perumai	12/17/75	Pascagoula Baton Rouge	1/76	Madras	Wheat	17.654	
lok Vinay	12/4/75	Baltimore	1/76	Bombay	Wheat	34.046	
atna Nandini	12/31/75	Portland	1/76	Vizag.	Wheat		Foreign Matter, Infesta- tion Complaint
Universe Defender	1/30/76	Bellachase	5/76	Calcutta	Wheat		Infesta- Complaint

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FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

ARTHUR L. STRASSER (1905-1987)

(STRASSER, SPIEGELBERG, FRIED & FRANK)

120 BROADWAY, NEW YORK, N. Y. 10005

(212) 964-6500

CABLE "STERIC NEW YORK"

IFLEX

W U INTERNATIONAL 620221

ITT INTERNATIONAL 424065

W U DOMESTIC 128173

TELECOPIER (212) 964-3795

TELECOPIER (212) 964-7682

October 18, 1976

LONDON OFFICE
11 THROCKMORTON AVENUE
LONDON E1 2N 2 JT, ENGLAND
(01) 828 7814
TELEX 887808
CABLE "TOLOND"

JERRY L. SMITH
RESIDENT PARTNER

WASHINGTON OFFICE
FRIED, FRANK, HARRIS, SHRIVER
& KAMPELMAN
600 NEW HAMPSHIRE AVE. N.W.
WASHINGTON D.C. 20037
(202) 955-9400
TELEX WU 882406
TELECOPIER (202) 337-5867

RICHARD B. BERRYMAN
DAVID E. B. RENBAUM
JAMES B. BLINKOFF
PETER D. EHRENHAFT
MILTON EISENBERG
JOEL R. FEIDELMAN
PATRICIA R. HARRIS
MAX M. KAMPELMAN
KENNETH S. KRAHER
ARTHUR LAZARUS, JR.
RICHARD SCHWARTZ
DANIEL M. SINGER

HAROLD P. GREEN
FREDERICK SASS
COUNSEL

OUR REFERENCE

1075-102

MILTON R. ACRMAN
FRANKLIN L. BASS
KENNETH R. BLACKMAN
LEONARD CHAZEN
MARC P. CHERNO
STEPHEN E. ESTROFF
ARTHUR A. FESER
JOHN F. FINN, JR.
ARTHUR FLEISCHER, JR.
STEPHEN FRAIDIN
HANS J. FRANK
WALTER J. FRIED
VICTOR S. FRIEDMAN
HERBERT L. GALANT
MATTHEW GLUCK
ROBERT S. GREENBAUM
SAM HARRIS
EDWIN HELLER
HERBERT HIRSCH
ARNOLD HOFFMAN
ALLEN I. ISAACSON
BERNARD E. JACOB
LESLIE A. JACOBSON
WILLIAM JOSEPHSON
ROBERT E. JUCEAN
RICHARD G. LOENGARD, JR.
FREDERICK LUBCHER
BENJAMIN MASSAU
DANIEL B. POSNER
ROBERT H. PREISKEL
SHELDON RAAB
MICHAEL H. RAUCH
WILLIAM I. RIEGELMAN
LAURENCE ROSENTHAL
PETER J. RYAN
DANIEL P. SCHECHTER
BARONET SHRIVER
MAYER SIEGEL
LEON SILVERMAN
HERMANN S. SIMON
LEWIS A. STERN

GEORGE A. SPIEGELBERG
COUNSEL

HAND DELIVERY

Honorable Robert J. Ward
United States District Court
United States District Courthouse
Foley Square
New York, New York 10007

Re: Government of India and The Food Corporation of
India v. Cook Industries, Inc. and Cook & Co.
76 Civ. 2001

Dear Judge Ward:

We received in today's mail a copy of Delson & Gordon's letter to Your Honor, dated October 12, 1976, in which they request permission to file an amended complaint.

We previously have advised Delson & Gordon that we believe they should withhold service and filing of what they claim to be a more factually complete complaint while defendants' motion to disqualify their firm is sub judice. To wait, we submit, presents no possibility of prejudice to their clients, and avoids possible further prejudice to our clients.

Our concern, of course, is with Delson & Gordon's continuing contribution to the prosecution of plaintiffs'

Honorable Robert J. Ward

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October 18, 1976

case against our clients. In that connection, I must note that Delson & Gordon's statement that the schedule annexed to the amended complaint is "identical to that forwarded to the defendants by the Embassy," is inaccurate. A comparison of the two schedules shows that the schedule annexed to the amended complaint refers to additional purported shipments, and, in some instances, raises additional complaints for previous listings.

Respectfully submitted,

Victor S. Friedman

VSF:ka

cc: Delson & Gordon, Esqs.

**COURT OF APPEALS
SECOND CIRCUIT**

**GOVERNMENT OF INDIA AND THE FOOD
CORPORATION OF INDIA,
Plaintiffs-Appellants.,**

- against -

**COOK INDUSTRIES, INC. AND COOK AND
COMPANY,
Defendants-Appellees.**

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

SS.:

I, Kevin E. Thomas, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 1515 Macombs Road, Bronx, N.Y. 10452,

That on the 10th day of June, 19 77 at 120 Broadway
New York, N.Y.

deponent served the annexed

upon

**Fried Frank Harris Shriver &
Jacobson, Esqs.**

~~deponent~~ Brin
the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 10th
day of June, 19 77

Kevin E. Thomas
Print name beneath signature
KEVIN E. THOMAS

Robert T. Brin

ROBERT T. BRIN
NOTARY U.S.C. State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1979

